



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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IM22/0829

EXAMINER

WEINSTEIN, S

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

08/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/230623

Applicant(s)

MAY ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 USC 103 (a) as being unpatentable over OHBA ('252) in view of applicant's admission of the prior art as further evidenced by Poppel et al (WO '760); further in view of Quaker Oats (GB. '351), Hillebrand et al (Australia '797), McMahon (GB. '351) QP Corp. (Jap '174), QP Corp ('677), Errass (Europ '046) and Henkel (GB '234).

In regard to claim 1, Ohba discloses a container comprising a base layer and an upper layer on top of the base layer. Not only does Ohba disclose it was conventional to provide a container with two (or more) layers on top of each other, Ohba discloses the layers can be food and specifically, pet food. Claim 1 differs from Ohba in the particular compositions of the layers. As evidenced by applicant's admission of the prior art and further evidenced by Poppel et al, it is well established in the art to provide solid food pieces in a gravy (the so-called chunk-type products) and it is old to provide a substantially solid food stuff (such as the so-called meat loaf products). These products are disclosed as being well established in the food art; particularly the pet food art. Applicant's admission of the prior art even discloses the two components have been combined in a combination meat loaf and chunk type product wherein the meat loaf product surrounds the formulated emulsion product. Since it is conventional in the art

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to provide layered foods or phases as evidenced by Ohba including pet foods, to modify Ohba and substitute for each phase other conventional food components as evidenced by applicants' admission of the prior art and Poppel et al is seen to have been obvious. Quaker Oats is relied on as further evidence of the conventionality of two phase or layered food products, eg. as a pet food; albeit not one on top of the other. McMahon and Hillebrand et al are also relied on as further evidence of layered phases and that the phases may vary as desired. QP Corp (Jap '174), QP Corp ('677), Errass (Europ. '046) and Henkel (GB. '634) are relied on as further evidence of various design phases that are achievable with different components, edible or inedible. Claim 1 recites that the particular concentrations of gravy and solid foodstuff which concentrations are seen to have been an obvious result effective variable. In regard to claims 2 and 3, as noted above, applicants admission of the prior art teaches the conventionality of formulation emulsion products having striated appearances and in the form of flakes. In regard to claim 4, the art taken as a whole (see eg. Poppel et al) teaches it is well established to add starch to gravy for viscosity control and as applicant's admission of the prior art attests to, such starches are conventionally used in the art for applicants' intended function. In regard to claims 5, 9 and 10, the particular viscosity of the components are seen to have been an obvious result effective variable. The art taken as a whole for example teaches that in order to maintain phases separate from each other their viscosities should be manipulated to prevent intermixing of layers. Similarly, the moisture content of conventional pet food layers is either inherent in the conventional pet food layers are or would have been an obvious result effective variable. That is, based on applicants' admission

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of the prior art, applicants appear to be using conventional compositions (eg. gelled meat loaf-claim 7) and the recited moisture content would be expected to be conventional. In regard to claim 10, the method claim, is seen to have been obvious in view of the art taken as a whole for the reasons given above. That is, filling two or more layers in a container is conventional as taught by the art taken as a whole including Ohba, and the sealing and heating of canned phased foods is also taught by the art taken as a whole including Poppel et al and Quaker Oats.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

S. Weinstein/vr

08/18/00

08/23/00


STEVEN WEINSTEIN
PRIMARY EXAMINER
ART UNIT 1761
8/29/00